

§ 1.11

§ 1.11 Handling information from a private business.

(a) The USDA is responsible for making the final determination with regard to the disclosure or nondisclosure of information submitted by a business. When, in the course of responding to an FOIA request, an agency cannot readily determine whether the information obtained from a person is privileged or confidential business information, the policy of USDA is to obtain and consider the views of the submitter of the information and to provide the submitter an opportunity to object to any decision to disclose the information. If a request (including a subpoena duces tecum as described in §1.215) is received in USDA for information which has been submitted by a business, all agencies of the Department shall:

(1) Provide the business information submitter with prompt notification of a request for that information (unless it is readily determined by the agency that the information requested should not be disclosed or, on the other hand, that the information is not exempt by law from disclosure);

(2) Notify the requester of the need to inform the submitter of a request for submitted business information;

(3) Afford business information submitters time in which to object to the disclosure of any specified portion of the information. The submitter must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to its competitive position, the submitter must explain item-by-item why disclosure would cause such harm. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under FOIA;

(4) Provide business information submitters with notice of any determination to disclose such records prior to the disclosure date, in order that the matter may be considered for possible judicial intervention; and

(5) Notify business information submitters promptly of all instances in which FOIA requesters bring suit seeking to compel disclosure of submitted information.

7 CFR Subtitle A (1-1-00 Edition)

(b) [Reserved]

[52 FR 49386, Dec. 31, 1987, as amended at 62 FR 33979, June 24, 1997]

§ 1.12 Date of receipt of requests or appeals.

(a) The date of receipt of a request or appeal, which contains the phrase "FOIA REQUEST" or "FOIA APPEAL" and is addressed in accordance with applicable agency regulations, shall be the date it is received in the office responsible for the administrative processing of FOIA requests or appeals.

(b) The date of receipt of a request or appeal which is hand-delivered to the address specified in agency regulations shall be the date of such hand-delivery.

(c) The date of receipt of a request or appeal which does not comply with paragraphs (a) or (b) of this section shall be the date it is received by the official designated in agency regulations to make the applicable determination.

§ 1.13 Appeals.

(a) Each agency shall provide for review of appeals by an official different from the official or officials designated to make initial denials.

(b) Each agency, upon a determination that it wishes to deny an appeal, shall send a copy of the records requested and of all correspondence relating to the request to the Assistant General Counsel, Research and Operations Division, Office of the General Counsel. When the volume of records is so large as to make sending a copy impracticable, the agency shall enclose an informative summary of those records. The agency shall not deny an appeal until it receives concurrence from the Assistant General Counsel, General Law Division, Office of the General Counsel.

(c) The Assistant General Counsel, General Law Division, Office of the General Counsel, shall promptly review the matter (including necessary consultation with the Department of Justice and coordination with the Office of Communications) and render all necessary assistance to enable the agency